

How enforcement affects operating permits

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The Department of Health Office of Drinking Water (ODW) has a long history of educating owners, operators and managers on the requirements of operating public water systems, and helping them address problems. When a system doesn't comply with state and federal drinking water rules, ODW takes enforcement action, in order, as follows:

1. Notifies the system of the violation and offers technical assistance.
2. Establishes an informal compliance agreement.
3. Issues a departmental order.
4. Issues fines.

Operating Permits

To support these formal actions, state law requires all Group A water systems to obtain an annual operating permit. ODW uses color-coded operating permits to rate system compliance with drinking water rules, and let consumers, regulators and lenders know if the system is adequate to meet current needs or grow.

- Green** = Substantially in compliance. Adequate for existing uses and new services up to the number of approved service connections.
- Yellow** = Substantially in compliance. Adequate for existing uses and new services up to the number of approved service connections, unless limited by a compliance agreement.
- Blue** = Substantially in compliance. Adequate for existing uses, but not for new connections.
- Red** = Substantial non-compliance. Inadequate for existing uses. No new connections allowed. Permits or licenses for properties the system serves could be denied. Lenders may choose not to finance loans associated with these properties.

Bilateral Compliance Agreement

A **Bilateral Compliance Agreement (BCA)** is a negotiated, signed agreement between the violating system and ODW. It is usually reserved for systems that show good faith in negotiations and past efforts to comply with the rules. The BCA details commitments and specific interim milestones ODW expects the system to meet. As long as the conditions of the BCA are met, ODW agrees to defer enforcement and to intercede on behalf of the system with the U.S. Environmental Protection Agency (EPA) for violations addressed in the agreement.

With a BCA, a water system in substantial non-compliance could avoid getting a red operating permit as long as it complies with the milestones. If the system fails or refuses to complete the tasks in the BCA, the operating permit reverts to red and ODW considers formal enforcement.

If a system is not in substantial non-compliance, its permit color depends on factors such as its approval status or compliance with a request to submit required planning information (see chart).



Formal enforcement

If informal attempts to bring a system into compliance fail, ODW initiates formal enforcement. This usually occurs when a system goes into substantial non-compliance or public health is threatened. Formal enforcement includes many types of action, all designed to effect compliance with applicable drinking water rules.

A **state departmental order (SDO)** directs all parties responsible for owning and operating a system to take specific actions to return to compliance within a set timeframe, and explains where they can get more information. Failure to comply with the SDO results in a red operating permit.

A **state agreed order (SAG)** is issued when a system agrees to make the changes needed to return to compliance. Failure to comply with the SAG results in a red operating permit.

A **state health order (SHO)** is issued when a situation poses an imminent threat to public health. When an SHO is issued, the system's operating permit is immediately changed to red. It remains red until the system satisfies all requirements of the order.

How Orders and Agreements Affect Operating Permit Color

As mentioned, a Bilateral Compliance Agreement with ODW could allow you to avoid a red operating permit. This table shows how complying with a BCA or the orders mentioned above could affect a system with a red operating permit:

Document in place	System is NOT a Significant Non-complier		System is A Significant Non-complier	
	<i>Complies w/document</i>	<i>Fails to comply w/document</i>	<i>Complies w/document</i>	<i>Fails to comply w/document</i>
Bilateral Compliance Agreement	GREEN*	**	YELLOW***	RED
State Agreed Order	GREEN*	RED	YELLOW***	RED
Department Order	GREEN*	RED	RED	RED
State Health Order	RED	RED	RED	RED

* Green is the best-case scenario. A system could be categorized "blue" if it has too many connections or lacks proper approvals, and "yellow" if it doesn't have a required Water System Plan.

** The color could be based on an evaluation of other appropriate criteria or determined by the Regional Office through an override.

*** Yellow is the best-case scenario. A system could be categorized "blue" if it has too many connections or lacks proper approvals.

For More Information

Contact the nearest ODW Regional office:

Eastern Region (509) 456-3115

Northwest Region (253) 395-6750

Southwest Region (360) 664-0768



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